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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Amendment to the Commission's Rules)
Regarding a Plan for Sharing)
the Costs of Microwave Relocation)

WT Docket No. 95-157
RM-8643

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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COMMENTS ON PETITIONS FOR RECONSIDERATION OF
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA") hereby submits its comments on petitions for reconsideration of the First Report and Order in the above-captioned proceeding.¹ In that decision, the Commission established a plan for sharing the costs of microwave relocation that will facilitate that process while ensuring the equitable distribution of those costs among PCS providers. No party has demonstrated grounds for reconsideration of any material aspects of the FCC's determinations regarding this cost sharing plan. Rather, the FCC should name a clearinghouse promptly so that the plan can be implemented and its full benefits can begin to be realized.

To further promote clearing of the PCS bands, the Commission also made several adjustments to the transition rules which will help curb, although not eliminate, abuses of the relocation process. PCIA submits that the additional adjustments set out below are warranted in order to prevent involuntary relocation from becoming a third round of negotiations. Most

¹ First Report and Order and Further Notice of Proposed Rule Making, WT Docket No. 95-157 (Apr. 30, 1996) (hereinafter "First Report and Order"). All petitions cited herein were filed in WT Docket No. 95-157 on July 12, 1996, unless otherwise stated.

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importantly, as the pace of negotiations and relocations accelerates, the Commission should finalize the cost sharing and transition rules and designate a clearinghouse in an expedited manner so that the clearing of the PCS band and the deployment of service will not be delayed.

I. THE FCC'S COST SHARING PLAN IS REASONABLE AND ITS BASIC PROVISIONS SHOULD NOT BE CHANGED

The FCC has adopted a cost sharing plan which will facilitate the clearing of the PCS band by allowing PCS providers to share the costs of relocations which benefit more than one party. The mechanism is based on an industry-consensus proposal developed by PCIA working with PCS licensees. The Commission should not change the main tenets of the plan, but should name a clearinghouse as soon as possible so that cost sharing can begin.

A. The Proximity Threshold Is the Most Efficient Method of Determining Cost Sharing Obligations

A few incumbents have requested that the trigger for cost sharing obligations take into account microwave to PCS interference² and adjacent channel interference.³ PCIA believes

² Petition of Association of American Railroads at 13; Petition of Tenneco Energy at 4-5. To the extent that microwave incumbents seek to expand reimbursement rights beyond the scope of the Commission's Rules or to extend any rights beyond the ten year sunset period, the Commission should not depart from the framework adopted in the First Report and Order. The proximity threshold methodology adopted by the Commission provides a PCS licensee with a clear method to calculate when it incurs a reimbursement obligation based upon placement of a PCS base station within a reimbursement "box." Additionally, the Commission has clearly established that an entity is not entitled to relocation or reimbursement after the expiration of the sunset period, at which time microwave incumbents will be converted to secondary status.

³ Petition of American Petroleum Institute at 3.

that the proximity threshold adopted by the agency is the best mechanism for determining cost sharing obligations and should not be modified. This method was developed by the industry as a close approximation of the results of an interference analysis using Bulletin 10F. However, because it is simpler to apply than Bulletin 10F, its use will streamline the cost sharing process and be less expensive for the industry as a whole.

PCIA expects that the proximity threshold already takes into account microwave to PCS interference in the vast majority of cases. The size of the box drawn around each relocated link will typically encompass PCS base stations that would have suffered interference from the incumbent had it not been relocated. In fact, because there are no clear standards for determining harmful interference from microwave to PCS, the proximity threshold is a particularly suitable means for accounting for such interference in an efficient manner. No further refinements are necessary or desirable.

As PCIA and numerous PCS licensees have previously explained, including adjacent channel interference in the cost sharing calculus will substantially increase the expense of administering the cost sharing plan. Each relocated link could potentially cause adjacent channel interference to several PCS providers prompting numerous additional cost sharing payments with little additional benefit in terms of the equities of relocation cost recovery. Accordingly, the exclusion of adjacent channel interference will not adversely affect the cost sharing recovery process and will ensure that this process is fair and easy to administer.

B. The Cap on Shared Costs Is Already Higher Than the FCC's Predicted Costs and Need Not Be Raised

No grounds have been offered to support increasing the cost sharing cap to include transition costs.⁴ Reasonable transition costs will be covered in the \$250,000 cap (plus \$150,000 for tower modifications) in most cases, because this figure is already significantly higher than the FCC's own estimate of the typical cost of a microwave relocation. A further increase in the cap will merely invite manipulation and exacerbate the risk of unnecessary disputes.

C. The FCC Should Extend to Twenty Business Days the Time In Which a PCS Relocator Must File Relocation Documents With the Clearinghouse

PCIA has proposed to extend the number of days a PCS relocator has to file paperwork with the clearinghouse from ten to twenty business days after the relocation agreement is signed. This will ease the burden on PCS providers relocating large numbers of links and ensure better accuracy for the filings. Because lengthening the filing period will not disadvantage or inconvenience any other parties, there should be no impediment to the FCC's adoption of this minor revision.

D. Designated Entities Should Remain Eligible To Participate In An Installment Payment Plan

The Commission should maintain its existing rule that permits a qualified "designated entity" PCS licensee to satisfy its cost sharing obligation under the same payment terms

⁴ Petition of American Petroleum Institute at 11-12.

applied to its PCS license. No legitimate basis has been offered to suggest modifying the eligibility for installment payments.⁵ As the Commission correctly concluded in the First Report and Order, an installment payment plan significantly reduces the burden of making cost sharing payments for such entities, while not impeding the ultimate recovery of cost sharing obligations.

II. THE FCC'S CHANGES TO THE RELOCATION RULES WILL HELP PREVENT ABUSES, BUT CLARIFICATION REGARDING INVOLUNTARY RELOCATION WILL FURTHER ENCOURAGE CLEARING OF THE PCS BAND

The FCC has made a number of clarifications and modifications to the transition rules which will facilitate the clearing of the PCS band. These changes will discourage abuse of the rules by those incumbents seeking to profit from relocation and should be maintained. To further promote adherence to the policies underlying, as well as the letter of the rules, the FCC should clarify the procedures to be used to implement an involuntary relocation.

A. The Sunset Period For Relocation Compensation Is Fair and Will Encourage Relocation Agreements

The Commission should maintain its ten-year sunset for relocation obligations. Almost all incumbents will have been relocated by the end of the ten-year period. Any left in the band after ten years will be given reasonable time to plan their own relocation, as provided by the rules. This sunset of relocation obligations is critically important, as it will give incumbents an added incentive to negotiate fair agreements with PCS providers.

⁵ See Petition of Tenneco Energy at 5-6.

B. The Inspection Rights For PCS Providers During the Voluntary Period Will Encourage Fair Relocation Agreements and Will Not Be a Burden On Incumbents

Some incumbents are concerned that inspection rights for PCS relocators should be limited because of the burden they impose on incumbents.⁶ These inspections will facilitate relocation agreements by allowing the PCS provider to examine the system and thus develop a proposal for a comparable system. It will be very difficult for a negotiating PCS provider to put forth a fully informed proposal when it has no independent knowledge of the incumbent's system. Moreover, because inspections are expensive for PCS providers, they will only be done to the extent required and should not cause unreasonable costs or disruption for microwave licenses. PCS providers are working hard to build out their own systems and do not have time or resources to waste on unnecessary inspections.

C. The FCC's Limit On Transaction Costs Is Fair and Will Help Prevent Disputes

The FCC's limits on the reimbursement of transaction costs strike a fair balance. Incumbents are not allowed reimbursement for internal transaction costs because they are hard to verify and easily manipulated.⁷ However, incumbents are entitled to reimbursement for external transaction costs during the voluntary and mandatory period up to a two-percent cap of the hard costs involved.⁸ In addition, to discourage incumbents from viewing the

⁶ Petition of Association of American Railroads at 13-14; Petition of Tenneco Energy at 2-4.

⁷ First Report and Order at ¶ 42.

⁸ Id. at ¶ 43.

relocation process as a business opportunity, PCS licensees will not have to reimburse them for consultant fees not directly related to determining comparable facilities.⁹

Some incumbents have proposed that all transaction costs should be reimbursable at all phases of the transition process.¹⁰ Because of the abuses of some incumbents and the fact that the legitimacy of these costs is so hard to determine, the Commission has developed a reasonable method of protecting both incumbents and PCS licensees. Relaxing these limits will only benefit incumbents who view the relocation process as a "business opportunity," contrary to FCC policy and the public interest.¹¹

**D. The FCC's Definition of a Comparable System
Should Be Maintained**

The clarifications the Commission has made to the definition of a comparable system will promote the efficient use of spectrum while guaranteeing incumbents a system which is as good or better than their current system. UTC has suggested that incumbents should be entitled to a system with the capacity to meet their demonstrable current and anticipated needs.¹² As the Commission understands, spectrum is a limited, public resource and should be used in the most efficient manner possible, with warehousing discouraged. The decision

⁹ Id.

¹⁰ See, e.g., Petition of American Petroleum Institute at 8-9; Petition of Association of Public-Safety Communications Officials-International, Inc. at 3-7.

¹¹ First Report and Order at ¶ 43 (citation omitted).

¹² Petition of UTC, The Telecommunications Association at 4.

to require that incumbents receive a comparable system with the capacity that they are currently using is fair and will encourage the efficient use of spectrum.

The FCC should also maintain its current requirement that an incumbent is only entitled to a system with the same overall reliability as its current system.¹³ This standard ensures that the incumbent will have a new system which is, on paper, as good as the relocated system. In fact, in almost all cases, the new system will be better than the relocated system since many incumbents have old equipment that will be replaced with new, more reliable equipment.

Some incumbents have requested that the FCC extend the time period over which a microwave incumbent must be compensated for increased recurring operating costs from five years to ten years.¹⁴ The reasons cited by the Commission in the First Report and Order provide sufficient justification to retain the existing five-year time period.¹⁵ For example, five years is the term of a microwave license and gives an incumbent ample time to finance any new costs. Furthermore, there is no reason to tie the payment of increased operating costs to the terms of a PCS license.

E. The FCC Should Clarify the Definition of Good Faith Bargaining During the Mandatory Negotiation Period

To encourage good faith bargaining during the mandatory negotiation period, the FCC should clarify that an incumbent requesting a cash payment which is not directly related to

¹³ See Petition of Association of American Railroads at 8-9.

¹⁴ See, e.g., Petition of Association of American Railroads at 5-6.

¹⁵ First Report and Order at ¶ 31.

any costs of relocation or reasonable negotiating costs will be considered to be negotiating in bad faith. This clarification will prevent demands like that of Suffolk County, which requested an \$18 million payment in addition to its new system.¹⁶ The FCC should make clear to all incumbents that the comparability standard guarantees them a system as good as the one they are currently using, not an additional source of income.

F. Incumbents Who Have Not Reached a Relocation Agreement During the Mandatory Period Should Vacate the 2 GHz Band By the End of the Mandatory Period or Be Automatically Converted to Secondary Status

PCIA strongly supports the clarification requested by AT&T and other PCS licensees that involuntary relocation is not a third negotiation period.¹⁷ The FCC should confirm that if a relocation agreement is not reached at the end of the mandatory period, the incumbent must vacate the band or be converted to secondary status. This clarification will in no way affect an incumbent's entitlement to comparable facilities. Rather, it will ensure that the deployment of PCS is not delayed.

As AT&T states, any dispute that cannot eventually be resolved by the parties will be taken to the Commission.¹⁸ Thus, an incumbent will be guaranteed the level of compensation the FCC determines is reasonable even if a voluntary agreement is not reached.

¹⁶ Comments of PCIA. WT Docket No. 95-157 at Exhibit A (filed Nov. 30, 1995).

¹⁷ Petition of AT&T Wireless Services, Inc., et al.

¹⁸ Letter to Michele Farquhar from John Thompson, et al., WT Docket No. 95-157 at 3 (filed April 16, 1996).

Since the FCC's resolution process will likely be time consuming, requiring an incumbent to self-relocate or accept secondary status will ensure that the deployment of PCS is not delayed by an unreasonable incumbent while maintaining the incumbent's entitlement under the rules to a comparable system. If incumbents are allowed to stay in the band during the dispute resolution process, the deployment of service to the public will be delayed indefinitely.

III. CONCLUSION

For the foregoing reasons, the Commission should affirm its cost sharing plan, but extend the filing date for submissions to the clearinghouse to twenty business days. In addition, in order prevent abuse of the relocation rules, the Commission should maintain its current modifications, but confirm that involuntary relocation is not a third negotiation period.

Respectfully submitted,

THE PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION

By: 

Mark Golden
Senior Vice-President of Industry Affairs
500 Montgomery Street
Suite 700
Alexandria, Virginia 22314
(703) 739-0300

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of August, 1996, I caused copies of the foregoing
"Comments on Petitions for Reconsideration of The Personal Communications Industry
Association" to be mailed via first-class postage prepaid mail to the following:

Cheryl A. Tritt
Susan H. Crandall
Stephen J. Kim
Morrison & Foerster
2000 Pennsylvania Avenue, N.W.
Suite 5500
Washington, D.C. 20006

Antoinette Cook-Bush
Skadden Arps Slate Meagher & Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005

Nancy J. Thompson
Comsat International Communications
6560 Rock Spring Drive
Bethesda, MD 20817

Philip V. Permut
Edward A. Yorkgitis, Jr.
Kelley Drye & Warren
1200 Nineteenth Street, N.W.
Suite 500
Washington, D.C. 20036-2423

Lon C. Levin
Personal Communications Satellite
Corporation
10802 Parkridge Boulevard
Reston, VA 22091

Bruce D. Jacobs
Fisher Wayland Cooper Leader &
Zaragoza, L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006

Gary M. Epstein
John P. Janka
Michael S. Wroblewski
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20024

Jeffrey L. Sheldon
Thomas E. Goode
UTC
1140 Connecticut Avenue, N.W.
Suite 1140
Washington, D.C. 20036

Robert M. Gurss
Wilkes, Artis, Hedrick & Lane,
Chartered
1666 K Street, N.W.
Suite 1100
Washington, D.C. 20006

Wayne V. Black
John Reardon
Keller and Heckman, L.L.P.
1001 G Street
Suite 500 West
Washington, D.C. 20001

Julian L. Shepard
Leo R. Fitzsimon
Verner, Liipfert, Bernhard, McPherson
and Hand, Chartered
901 15th Street, N.W.
Suite 700
Washington, D.C. 20005

Thomas J. Keller
Leo R. Fitzsimon
Verner, Liipfert, Bernhard, McPherson
and Hand, Chartered
901 15th Street, N.W.
Suite 700
Washington, D.C. 20005

Mark J. Tauber
Mark J. O'Connor
Piper & Marbury, L.L.P.
1200 19th Street, N.W.
Seventh Floor
Washington, D.C. 20036

Cathleen A. Massey
Vice President - External Affairs
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, N.W.
Fourth Floor
Washington, D.C. 20036

William J. Roughton
Associate General Counsel
PCS PrimeCo, L.P.
1133 20th Street, N.W.
Suite 850
Washington, D.C. 20036

Michael F. Altschul
Vice President - General Counsel
Cellular Telecommunications
Industry Association
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036

Gene DeJordy
Director of Regulatory Affairs
Western Wireless Corporation
2001 NW Sammamish Road
Issaquah, WA 98027

William Richardson
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037

Andre J. Lachance
GTE Mobilnet
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

Nancy A. Bettano
Nancy A. Betters